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THE PLURALISTIC STATE

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The doctrine of the pluralistic state has found its most outspoken advocate in this country in Mr. Harold J. Laski,—an Englishman, recently of Harvard University, and more recently still called back to England to the London School of Economics of the University of London. A number of channels of thought have come together in Mr. Laski's present formulation of the doctrine. Among those in England from whom he received much inspiration and suggestion may be mentioned the late Professor Maitland, and Dr. J. Neville Figgis, as well as Mr. Graham Wallas, and Mr. Ernest Barker.

Professor Maitland's work in this field is closely associated with that of Dr. Otto Gierke in Germany, to the third volume of one of whose works, *Das Deutsche Genossenschaftsrecht*, which Professor Maitland translated, he wrote his famous Introduction in which he stated his own views with regard to the real and truly corporate personality, not only of the state but of other social groupings as well. Another of Gierke's works is *Die Genossenschaftstheorie*, in which it is attempted to show, to quote Dr. Figgis, "how under the facts of modern life the civilian theory of corporations is breaking down on all hands, and that even in Germany, in spite of the deliberate adoption of the Romanist doc-

trine, the courts and sometimes even the laws are being driven to treat corporate societies as though they were real and not fictitious persons, and to regard such personality as the natural consequence of permanent association, not a mere mark to be imposed or withheld by the sovereign power."¹ Dr. Figgis's main contribution was through his *Churches in the Modern State*, and Graham Wallas's, chiefly in his *Human Nature in Politics* and *The Great Society*. Mr. Barker's theory is found especially in his paper "The Discredited State," published in *The Political Quarterly* for February, 1915.

Among French writers, Mr. Laski probably quotes M. Léon Duguit, for twenty-five years or more professor of law at the University of Bordeaux, as often as anyone. M. Duguit is the author of many works, in which among other things he claims to establish what he terms a juridical limitation on state sovereignty as opposed to the doctrine of the absolute state. The theory of syndicalism in France, also, as well as that of guild socialism in England, has made its contribution to the content of Mr. Laski's thought, and many other influences might be mentioned. Mr. Laski's own main works on the subject, in which he presents a very complete pluralistic doctrine, have been his *Problems of Sovereignty* and more recently his *Authority in the Modern State*.

Closely associated with the pluralistic doctrine in America also, although not in reality identified with it, is the recent work of Miss M. P. Follett, *The New State*. In this, she lays great stress as do the pluralists, on group organization as an important key to modern social and political problems. But, unlike the pluralists, she denies to the separate groupings an isolated sovereignty, while in their interdependence and interpenetration she finds the unifying elements of the one supreme sovereignty of the new democratic state of the future.²

The doctrine of the pluralistic state, as can be inferred from its name, stands in opposition to that of the monistic state, which with all that it implies has long been the accepted state theory of political science. The monistic theory found its origin

¹ Figgis, *Churches in the Modern State*, pp. 55, 56.

² See especially *The New State*, pp. 282 ff.

in antiquity, and during the middle ages survived the competition, on the one hand of the "Christiano-Germanic"³ idea of the liberty and sovereignty of the individual, and on the other of the medieval idea of the essentially federalistic nature of society, until in the sixteenth century it was given by Bodin what has become its classic modern form. The Austinian formulation of the doctrine of sovereignty, to the essence of which, in spite of much adverse criticism as to form, the orthodox political scientist still clings, is but a further and more explicit statement of the theory enunciated by Bodin.

According to the monistic theory of the state and of sovereignty, the state is defined, to begin with, as the political organization of society. But the term political must itself be defined, and by political organization the adherents of this school mean, that organization which may be observed as enforcing its will, in the last analysis, by coercion through the use of physical force. It is to this form of organization, which they find practically universal in society, that they give the name political to distinguish it from other forms of social organization and grouping. On further analysis also they claim to discover, as would obviously be necessary, that the political organization has at its disposal the major physical force of the community, and to the element in the political organization which thus controls the major physical force the name sovereign is given, and its power thus to enforce its will is called sovereignty. This is really only another way of saying that whenever in any organized social grouping there is a factor to which for any reason the possessors of the major physical force are so bound that they respond with their physical power to the call of this controlling factor for assistance in enforcing upon the recalcitrant obedience to its command, there we have a political organization or the state. It will be noted that according to this analysis such enforcement becomes necessary, or seems to the controlling factor to be necessary or desirable, because there are in the community those who oppose its will, and whom it can thereby coerce into obedience.

³ Gierke, *Political Theories of the Middle Age*, p. 88.

Of such a political community other characteristics, also, are pointed out by the orthodox school:

In the first place, they affirm, the political organization has a territorial basis; that is the exercise of its coercive power is extended over the people on a given territory, such territory being limited only by the extent of the control exercised by the sovereign power.

Secondly, in a given territorial political organization, they declare, there is and can be only one such sovereign power as they describe; that is they affirm unity as a necessary characteristic of the state. For by their very definition they assert that among the many different bonds that are at all times operating to unite men in society, there is one stronger than the others, to which they give their preference and to which they give their physical support when it is demanded, even though other allegiances may also be demanding it. If a man cannot choose between two loyalties or allegiances, he is, so far as state organization is concerned, rendered impotent and is at the mercy of those who can and do make the choice, and who support their choice with their physical force. If different men in a social organization choose different allegiances for such physical support, then the result, they say, is, of necessity, either conflict between the two until it is established which is in reality the stronger and able to subdue and hold subject the other, or else, if neither is able to prove itself decisively the stronger, the setting up of two political organizations, and two unified states instead of one.

Thirdly, they declare that this sovereignty that they are describing is absolute, all powerful, unlimited, final, supreme. It is absolute, supreme, all powerful, largely because of its especial nature; that is because the weapon of which it makes use is just that weapon against which, temporally and finitely speaking, nothing can prevail, and it is essentially with temporal and finite concerns that political society is occupied. The spiritual weapons of the church, for instance, stand out in marked contrast to that wielded by the state, since after the spiritual penalties have all been inflicted, and the church can go no further, the individual still, to all intents and purposes occupies the same

place in political society that he occupied before. And likewise with regard to economic penalties imposed by an economic group or by the state; they may be such that if rigorously applied, they would cut off the springs of human life; but, inasmuch as they are more indirect, they are more uncertain in their working, and moreover, for their final application they must often call upon the arm of the physical power. The coercive power of the state, on the contrary, can and does in the last resort remove all opposition by removing those who oppose its will. As an absolute, supreme, all powerful organization, the power of the state, also, is unlimited according to this doctrine. For only that which is not limited by something stronger than itself, can be absolute in this sense.

Fourthly, the American exponents, at least, of the orthodox theory also make a distinction between what they regard as the original fundamental political organization or state, and the machinery through which it expresses its sovereign will, to which machinery the name government is given. That which they term the state acts of its own initiative and energy and power; that which they term government is only the agent of the state, and is clearly dependent on state power and ultimately on state will. This distinction has been perhaps most clearly set forth by Professor Burgess of Columbia University, and may be cited as one of the chief contributions of America to political thought. The political organization in this country has made it easier than in European countries to perceive the distinction; and the failure of European writers to recognize it may be partly responsible for the conflicting views.

Fifthly and finally, the orthodox theory holds that, human nature being what it is, true and assured liberty does and can exist for the individual or the group of individuals only as created and guaranteed by the state in the form of legal rights; that the so-called natural rights to life, liberty, equality, happiness, property and so forth, amount to little or nothing except as the state guarantees them and stands behind them, inasmuch as, even if they were the gift of nature, about which there is much and grave doubt, they could always be taken away by some one

better endowed by nature unless the state should interpose its superior power in their defense.

The political monists do not, on the other hand, maintain that this sovereign power is necessarily actively exerted over all its subjects in relation to all details of life, at all times. They maintain only that it can and does fix the scope of its interference and that it can exert itself where and when it will, and that if it refrains, it does so because it deems it expedient so to do. Nor do they maintain or admit that fear is the only motive power that binds the group together and insures obedience. In the vast majority of cases the sense of solidarity, and the fundamental loyalties that operate to insure support for the sovereign power, are necessarily and naturally active also in insuring obedience to that sovereign power, and the maintenance of law and order in the group. It is only against the recalcitrant that the force of the state must either potentially or actively be exerted, and that is in, at most, a small minority of cases. In fact, it is, they hold, only because of the comparatively few recalcitrant and disagreeing ones that political organization is deemed necessary. If all human nature, or even all of that in one group were entirely and at all times united in one superior loyalty, that would in itself be sufficient to hold the group together and no other means would appear as necessary or desirable. That not being the case, the controlling factor in the group has, as a practically universal thing, resorted to the all-compelling force of physical power as sanction for its will, and hence the universality of political organization among men. Finally, political monism does not necessarily, as such, maintain that the all powerful sovereign is freed from the obligations of the moral law. This point of view is characteristic only of some exponents of the doctrine. All that monism, as such, asserts in this connection, is that unless the sovereign power itself wills to obey the moral law, there is no earthly power that can force it to do so. It might be added here that there is nothing inherent in pluralism to assure obedience to the moral law.

Such is the doctrine of the unified monistic state, for which is claimed, as we have seen, direct and absolute power over each individual subject as well as over all groups of subjects. The attention of the political monist has been directed chiefly upon this power, and he has been very largely concerned with the attempt to reduce all forms of group life to a strict legal definition in order to bring them within the canons and the control of law. In so doing he has, in some part at least, lost sight of the fact that during these recent times human society has been becoming infinitely more complex, that organization has for a variety of reasons been going on among men with amazing rapidity, and that some of their most vital interests have centered in these organizations within the larger society. "Men turn," says one adherent of the pluralist doctrine, "to fellowship as the compass needle turns to the pole, and they form themselves into groups and societies and communities of various kinds, religious, cultural, social, economic. They have churches, the bank clearing house, the medical association, the trade union, and wheresoever there is an interest strong enough to form a nucleus you will find men gathering around it in an association."⁴ The attention of the pluralist, however, has been arrested by these groups and by their increasing influence not only over their members, but in the body politic, and in his attempt to interpret this group activity and influence, he has set up the doctrine of the pluralistic state.

The pluralist begins his attack on the monistic doctrine by denying what the monist states as the underlying facts of political organization, and especially the essential unity and absoluteness of the state and its sovereignty. He does not see in the state a social grouping unique in kind and paramount to all others, but declares that the political group is only one among others (of which there is such bewildering variety at the moment) of essentially like or similar nature, over which moreover, he claims, the state is not, and cannot be, supreme—the political loyalty, he declares, being only one among many loyalties by

⁴ *The Nation*, July 5, 1919, p. 21.

which every individual is bound, and not of a peculiar and superior validity.

Dr. Figgis cites as an instance of the inability of the state to control other social groupings within it, the fact that "in regard to the immigration law in South Africa, it was admitted that the imperial Parliament dare not override the will of the local bodies even though they were doing a manifest injustice to their fellow subjects."⁵ Mr. Laski mentions as illustrative of the same impotence of the so-called sovereign state the inability of Parliament to coerce Ulster in 1914, the ability of the women suffragists to defy the law in England for a long period before the war, and the powerlessness of the state, as he says, to force the subjection of conscientious objectors to the Military Service Act of 1916. He draws therefrom the conclusion, to cite his own words, "that government dare not range over the whole area of human life;"⁶ in which statement also he means to include his denial not only of the supremacy, but also of the unity of the state. And Gierke maintains that the developing theory of the absolute unitary state in the middle ages as postulated of the empire stood in sharp contradiction to the actual facts of the situation.⁷

The adherents of the pluralistic state, however, go much further than this. Comparatively little of their polemic is concerned with the denial that the state can or does control everything within its jurisdiction. By far the greater part of it is taken up with a discussion not of fact, but of right, and the transition from the one point of view to the other is by such subtle and imperceptible steps, where indeed the two are not bound up inextricably with each other, that it becomes very difficult to know in the specific case whether one is within the realm of fact or of theory. Laski continues the paragraph from which I have already quoted, in which he denies that government dare "range over the whole area of human life" [and note the word "dare" used here] as follows: "No government, for instance, dare prescribe the life of the Roman Catholic Church. Bismarck made the

⁵ *Churches in the Modern State*, pp. 84-85.

⁶ *Authority in the Modern State*, p. 45.

⁷ *Political Theories of the Middle Age*, p. 95.

attempt and it is doubtful if it will be repeated. Where alone the state can attempt interference with groups other than itself, is where the action of the group touches territory over which the state claims jurisdiction. There is no certainty that the state will be successful. There is even no certainty that it merits success." [Note, again here, the shift from the "is" to the "ought."] "It may indeed crush an opponent by brute force." [Note here the acknowledgment of a possible fact.] "That does not, however, establish right, it is merely the emphasis of physical superiority. The only ground for state success is where the purpose of the state is morally superior to that of its opponent. The only ground upon which the individual can give or be asked his support for the state is from the conviction that what it is aiming at is, in each particular action, good It deserves his allegiance—it should receive it, only where it commands his conscience."⁸ This is only one of many similar instances, in all of which Mr. Laski's main insistence is that the state ought not to interfere with other allegiances which may bind its members into other social groupings.

In Gierke's work also we have a curious and difficult intermingling of the "is" and the "ought to be." Gierke's main object is to show the mediaeval theories of the state and of other social groups, whereby under the influence of Roman law all forms of group life tended to be put into the category of the *persona ficta* of the corporation and to be considered solely as created by and existing at the will of the political power as expressed in law. Throughout the whole, however, there runs Gierke's constant protest against what he believes the essential wrongness of this point of view and his constant assertion that these social groupings are real rather than fictitious personalities, that they exist of themselves, that they come into existence and develop by a natural process, and that they are therefore possessed of "natural rights" which, since they are quite independent of the state, the state is in duty bound to respect, and which therefore constitute a real limitation upon the sovereignty of the state.

⁸ *Authority in the Modern State*, pp. 45-46.

In spite of this, there is also evident throughout the whole the tacit acknowledgment that, as a matter of fact, the state was actually controlling the forms of group life within itself, though wrongly, again, as he believes.

Such then are the main contentions of the pluralists both with regard to the "is" and the "ought to be" of political science. Other points in their doctrine will appear as we examine the main lines along which the orthodox school attempts to answer or to criticize the pluralistic doctrine. In the first place, the orthodox theorist would unmistakably assert that he does as a matter of fact discover in political society a supreme and unitary control, and in making this assertion he would find great comfort and support in the knowledge that Dr. Figgis himself goes in one place so far as to say: "It [the orthodox theory] is true to the facts only in a cosy, small and compact state [but 'true,' it is to be noted, nevertheless]—although by a certain amount of strained language and the use of the maxim 'whatever the sovereign permits, he commands,' it can be made not logically untenable for any conditions of stable civilization."⁹ This is an acknowledgment on Dr. Figgis's part of all that the monist would ask him to admit.

In the second place he would point out that the issue must always be kept clear and distinct between the study of things as they are, and that of things as they ought to be. He would assert that the first concern of political science is to discover and to establish the positive laws of political phenomena as it finds them actually to be, and that only after it has accomplished that is it ready to pass judgment upon the rightness or the wrongness, morally speaking, of the facts it has discovered, or to enter upon the matter of political and governmental reform.

Thirdly, he would call attention to the distinction between state and government, as already noted, and he would point out that he has never denied that there are of necessity limits to governmental power, inasmuch as the government is only the

⁹ *Churches in the Modern State*, p. 224.

agent of the state and as such is and must be subject to, and limited by the state's sovereign will. He would further call attention to the fact, as he sees it, that the instances cited as showing that the state is not all powerful against certain individuals or groups, are really instances of governmental rather than of state impotence, and that in none of these instances was the final power of the community invoked, so that one cannot state with definiteness where the real strength in the given situation lay. He would hold that the apparent inability of the government to deal adequately with the opposition can be amply accounted for without any impairment of the sovereignty of the state, and in any one of a variety of ways:—either, for instance, that in passing the law in question the government was not accurately registering the actual sovereign will of the state, inasmuch as it failed to take into consideration the attitude of those who now defy the law, whose will is in reality an integral and conditioning factor in the sovereign will and must be considered as such; or, as another possibility, that under the given circumstances the government, and even perhaps that which has been the state behind the government, has deemed it inexpedient to push the matter to an actual test. Without such test, however, it would, he declares, be impossible to determine where the power of control really lies; that is, whether, sovereignty still resides in that which has been the controlling factor, or has passed to the opposing group or groups.

Fourthly, orthodox political science will maintain that inasmuch as by reason of its nature the political organization is an all inclusive organization in a given territory, and also, by reason of its nature, again, the most powerful organization, it must in a sense include and be in a position to control all other social groupings. Political monism, as such, does not claim, however, that the state creates these groupings; it is well content to leave to them an origin and a natural existence of their own. Nor does it attempt to reduce them to the position of the corporation, the *persona ficta* of Roman law. All that it does claim is that of necessity the state is, as a matter of fact, stronger than any one of them, and that it therefore can control them, and that, more-

over, the measure of control which it actually exercises is that measure which it wills to exert or deems it expedient that it should exert. It does however, as already pointed out, deny that these social groups are possessed of any natural rights which in effect limit the power of the state. It believes that if the social groupings are possessed of true rights, they have them because, and only because, the sovereign power of the state guarantees them against any who would attempt to take them away.

Fifthly, the orthodox scientist would again call attention to the point, stressed earlier in this paper, that he in no way necessarily denies that the state ought to obey the moral law. All that he definitely maintains in this connection is that the moral law does not impose any positive, coercive, political or legal limitation on state action, or on sovereignty, but that as the state wills to act, so it acts—either morally, immorally or unmorally, as it chooses, inasmuch as, even though it may will to act contrary to the moral law, there is obviously no higher human authority to coerce it.

Sixthly, and not least importantly, he would voice his concern over what he sees as the very probable practical results of the pluralists' teaching. If, as the pluralist holds, the state is not all powerful, but the political loyalty only one of many loyalties, more or less equally strong, then obviously something approaching chaos may result, if these coördinate loyalties are numerous and potent and conflicting enough. Moreover, even if, he says, we give the pluralist the benefit of the doubt, and see in his argument only a plea that the state ought not to bind anyone or any group against its consent, then, also, something very like anarchy or chaos is apt to ensue. The question as to the right or the righteousness of the state in demanding the unconditional obedience of its subjects, or, from the other point of view, of the right or the righteousness of the subjects in resisting the state, is one of the most difficult of political science; but it seems quite clear that to count the political allegiance as simply one among many allegiances of approximately equal weight, and to establish the general principle that the active consent of the governed is a necessary precedent to all obedience even in the

individual case, must tend to lay the way open to a very disorganized and casual political organization, and one which must inevitably endanger what are usually regarded as the prime functions of that political organization, namely, the maintenance of law and order, and the guaranty of liberty and of rights.

To the mind of the orthodox scientist, then, the chief difficulty with the validity of the pluralist doctrine is to be found in its confusion of thought as seen in its failure to distinguish, first, between state and government, and secondly, between the study of the facts of political organization, as, whether for good or for ill, they actually are; and the exposition of political organization as it ought to be. The other points of criticism, also, center around these two, for the doctrine of natural rights itself, which the pluralist is resuscitating for his minor social groupings and even for the individual, is the result of a confusion in thought between the concept of things as they are and things as it seems that they morally and ethically ought to be. Moreover, the declaration that men or groups of men must never be bound against their consent is in reality the postulation of an ideal state of things, in which there would be either entire righteousness and wisdom and agreement among men, or at least enough to insure the order and stability of the body politic. Figgis himself acknowledges that: "To prevent injustice between them [social groupings] and to secure their rights a strong power above them is needed. It is largely to regulate such groups and to insure that they do not outstep the bounds of justice that the coercive force of the state exists. It does not create them; nor is it in many matters in direct and immediate contact with the individual."¹⁰ This is, it may be noted, all, in effect, that the orthodox point of view necessarily claims for the sovereignty of the state.

After all this criticism, however, orthodox political science is still obliged to acknowledge certain great and valuable contributions which the pluralist doctrine has made and is making to

¹⁰ *Churches in the Modern State*, p. 90.

political thought, especially in the troubled situation of the present; and to see in it a righteous protest against some unfortunate developments within the orthodox doctrine itself.

In the first place, the pluralist teaching puts a timely emphasis on the fact that states are, after all, despite their legal omnipotence, subject to the moral law. In so doing it offers a very necessary protest against some developments of the doctrine of sovereignty, especially in German philosophy, according to which the state was not only all powerful, but also all righteous, even partaking of the nature of the divine, an end and a morality in itself, and therefore always to be obeyed no matter what it might command, a point of view, it must be noted, not at all a necessary deduction from the orthodox doctrine.

Moreover, the pluralist doctrine in urging what it describes as the natural rights of all social groupings, with which the state cannot rightly interfere, very properly utters a warning against overinterference on the part of the state with the concerns of the individuals and groups within it. It is significant, however, in this connection, to note that those who urge the pluralist doctrine most warmly would, at least in many cases, provide through other forms of social grouping, for a large amount of supervision over the specific activities of the group on the part of the organization controlling it. And if it be objected that this control is not a coercive control, the question arises as to how it is to be assured, and also as to what is to happen when the will of the other group or groups conflicts with that of the state. For it is only in the case of conflict that, according to the orthodox theory, the active force of the state is, or needs to be invoked. So long as men are of one mind and one will the political organization as such may remain in abeyance. Many of us are never aware of the restraining force of the law; it is only when one's will or the will of others finds itself in opposition to the state will that the political machinery as distinguished from the machinery of other social groupings is put into motion. And just as soon as the minds and the wills of men have become so unanimous that no conflict appears, the political organization as we have known it can either disappear or change its essential character. Then

we shall have, and shall need to have no state. One cannot escape the feeling that what the pluralist has really in mind is a society unlike that in which we live today, and that, to use Professor Maitland's words in a connotation other than that in which he used them, he is trying to force his concept of things as they ought to be upon the "reluctant material" of human nature and human conditions as they actually are.

It may perhaps also be remarked that in the pluralist doctrine may be seen in one sense a protest against the too static terms in which the classical theory of sovereignty, especially as stated by Austin, was put, terms which cannot be strictly accurate in a world of constant change and flux for which they do not sufficiently allow. However, in its protest, it goes much too far in the opposite direction, and the description of society that it offers is one that would itself be accurate only in a very advanced state of disorganization, in which a number of loyalties were actually and actively competing for mastery, as compete they would, —a fact which the pluralist seems to overlook.

Finally, the pluralist doctrine is timely in that it calls attention to the present bewildering development of groups within the body politic, and to the fact that these groups are persistently demanding greater recognition in the governmental system. How this recognition is to come, whether through group rather than geographical representation in legislative assemblies, or by some other means, is a problem in itself, for the proper and best way to deal with these groups is perhaps the greatest question before political science today. It may be, as most of the pluralists believe, that a federal organization of government is the solution. To such a solution, the monist could theoretically give his very hearty support, whatever his views as to its practicability might be; but in thus approving it, he would call attention to the all important fact, so consistently overlooked by the pluralist, that the truly federal state is a unitary state, of which the essence consists in the fact that in and through and above its multiple governmental organization there is one supreme loyalty and political sovereignty.